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Single Bench

(1)

IN THE HIGH COURT OF CHHATTISGARH JUDICATURE AT BILASPUR (C.G.)

W.P. NO. 228 **/2005**

PETITIONER : Shri Ram Singh Vanshakar, S/o. Shri Rati Ram Vanshkar, aged about 21 years, R/o. Jhansi Road, Kalapuram, Near Rawatpura, Sarkar Engineering College, Datia (M.P.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Department of Home Affairs and Armed Forces, Mantralaya, D.K.S. Bhawan, Raipur (C.G.).
2. Deputy Director General of Police, C.G.A.F. Bhilai, Office of Chhattisgarh Shashastra Bal/Armed Forces, Bhilai (C.G.)
3. Senani, 7th BN Battalion C.G.A.F.Bhilai, Office of Chhattisgarh Sahastra Bal/Armed Forces, Bhilai (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR GRANT OF WRIT.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.228/2005

Shri Ram Singh Vanshkar

Vs.

State of C.G. & Others.

Post for 8/3/2006

Sd/-
Fakhruddin
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.228/2005

Shri Ram Singh Vanshkar

Vs.

State of C.G. & Others.

Miss Sapna Kshatry, counsel for the petitioner.

Shri A.S. Kachhawaha, Dy. Govt. Advocate, for the State.

ORDER

Per Hon. Fakhruddin, J:

Heard learned counsel for the parties.

2. By this petition under Article 226/227 of the Constitution of India, the petitioner has prayed for quashing of the order dated 22/12/2003 (Annex.P/1) and also prayed for appointment in the post of Constable. The prayer is also made to the effect that the petitioner be compensated for the loss of salary since 4/7/2001 till date which the petitioner would have earned had he been in the job.

3. Brief facts of the case are that the petitioner's father was Constable in 33rd Batalian, Bhilai, who died on 29/8/1993, while in service. Annexure-P/5 is the death certificate. The petitioner applied for compassionate appointment on the post of Bal Aarakshak, which was granted to him vide Annexure-P/6 dated 11/11/1994. He joined the services and thereafter served. When the petitioner attained the age of 18 years, he prayed for absorption in the State of M.P. vide application dated 4/7/2001. He moved another application on 1/10/2001 for absorption in the State of C.G. The application was rejected vide the impugned order dated 22/12/2003 (Annex.P/1) on the ground that the petitioner has not passed the Xth class and as such was not qualified.

4. Learned counsel for the petitioner pointed out that the case of the petitioner was sent as per Annex.P/8 to the Deputy Inspector General that if the petitioner is absorbed then one year can be given to him to pass Xth class. With reference to

this, as per Annex.P/7, Deputy Inspector General informed that the Commandant could take decision himself. It is stated that vide Annex.P/9 direction was issued by the Police Headquarter, Raipur to all the Officers in which it is said that instructions are issued from time to time for appointment on the post of Aarakshak (Constable) from Bal Aarakshak and in view of the clear instructions issued on 25/4/2000 it is not necessary to issue fresh instructions for such appointment. It was further clarified that those who have attained the age of 18 years and have not been able to pass Xth class, they should not be removed and they should be given the appointment on the condition that they will pass Xth class within two years. During this period, they should be attached either in line or such job should be taken from them so that they can study. The Police Headquarter also noted that cases are referred after the Bal Aarakshak attains the age of 18 years whereas in such cases where the guidance is required the same should be sent before attaining the age of 18 years. It was also directed that the appointment from Bal Aarakshak to Aarakshak (Constable) does not come in the category of fresh appointment and as such the ban imposed by the State Government is not applicable.

5. Learned counsel for the petitioner submits that ignoring all the instructions, the matter has been delayed. It is also submitted that vide Annex.P/4, the petitioner has passed 10th Class in the month of December, 2003.

6. Reliance is placed upon the judgment of the Apex Court in the case of ***Gujarat Agricultural University vs. Rathod Labhu Bechar and others*** reported in ***AIR 2001 SC 706***. Counsel for the petitioner referred to para 26 of the said judgment, so far as regularization is concerned, which reads as under:

> *"26. .....Under Clause 1 of 'Scheme for Regularisation of Daily Rated Labours of the Gujarat Agricultural University', it is proposed that all daily wage workers, whether skilled, semi-skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calendar year as on 31st December, 1999 is to be regularised and be put in the time scale of pay applicable to the corresponding lowest grade in the university. However, the said regularization is subject to some conditions. Under clause 1(a) such employee is eligible only if he possesses the prescribed qualifications for the post at the time of their*

appointment. The strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for Peon is that he should study upto 8th Std., for Operator-cum-Mechanic, should have Diploma in Mechanic having sufficient knowledge of vehicle repairing experience in automobiles or tractors Dealers workshop for two years, for Chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber to have I.T.I. Certificate.

We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence clause 1(a), need modification to this effect."

7. Return has been filed by the respondents. It is submitted that the petitioner, who was appointed as Child Constable on the basis of compassionate appointment vide order dated 11/11/1994, had submitted an application for his appointment to the post of Constable but since he had not submitted any certificate regarding his clearance from the 10th Board Examination, which was a condition precedent for an appointment on the said post, therefore, the application submitted by him was rejected by the Deputy Director General of Police, Chhattisgarh vide order dated 22/12/2003. It is further submitted that respondent no.3 had directed the petitioner by letter dated 31/5/2002 to submit the mark sheet in respect of 10th Class Examination and in pursuance of the said letter neither the petitioner submitted the mark sheet nor submitted any explanation. It is also submitted that an application dated 10/6/2003 was submitted by the petitioner informing that he could not succeed in 10th Board Examination and prayed for one year time for the study. It is also submitted that since the petitioner had not passed the matriculation examination in time, therefore, respondent no.3 wrote a letter dated 25/6/2003 to the Deputy Director General of Police, Chhattisgarh that if the requisite period of two years would have been provided to the petitioner, even then the petitioner's services would have been terminated by 9/7/2003 on completion of two years of services from 4/7/2001. It is stated that by the said

letter respondent no.3 sought a guidance from the Deputy Director General of Police, Chhattisgarh regarding the posting of the petitioner on the post of Constable. It is also stated that in pursuance to the aforesaid letter, respondent no.2 rejected the application of the petitioner vide the impugned order.

8. Perused the record. It is noted that there are clear instructions of the Police Headquarter that the appointment from Bal Aarakshak to Aarakshak (Constable) does not come in the category of fresh appointment and as such the ban imposed by the State Government is not applicable. It was also clarified that those who have attained the age of 18 years and have not been able to pass Xth class, they should not be removed and they should be given the appointment on the condition that they will pass Xth class within two years and during this period they should be attached either in line or such job should be taken from them so that they can study. There is also a direction that in such cases where the guidance is required the same should be sent before the Bal Aarakshak attains the age of 18 years. In the instant case, ignoring all the instructions, the matter was unnecessarily delayed by the authorities. Apart from this, the petitioner has also passed 10th Class in the month of December, 2003 and there is no impediment.

9. Having thus considered the facts and circumstances and the material on record as discussed hereinabove and in view of the clear instructions issued on 25/4/2000 and the law laid down by the Apex Court in the aforesaid case, the impugned order dated 22/12/2003 (Annexure-P/1) is set aside.

10. So far as the prayer to the to the effect that the petitioner be compensated for the loss of salary since 4/7/2001 till date which the petitioner would have earned had he been in the job is concerned, the petitioner on being reinstated may file the representation to the authorities concerned which may be decided by the authorities concerned on its own merits in accordance with law and if any grievance still remains, the petitioner may avail the remedy available at law.

11. Accordingly, the petition is allowed with costs.

Counsel fee Rs.2000/-.

Sd/-
Fakhruddin
Judge